

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2011, Legislative Day No. 15

Bill No. 66-11

Mr. John Olszewski, Sr., Chairman
By Request of County Executive

By the County Council, September 19, 2011

A BILL
ENTITLED

AN ACT concerning

Dispute Resolution Procedures - Binding Arbitration

FOR the purpose of providing for the declaration of an impasse concerning wages and pension benefits with certain exclusive representatives; providing for an arbitrator and requiring the selection of an arbitrator through a certain process; providing for a hearing; establishing the duties of the arbitrator; requiring the arbitrator to consider certain factors; prohibiting the arbitrator from allowing or considering certain testimony; requiring and authorizing the County Executive to take certain actions; providing that the County Council is not bound by certain actions; providing for the disposition of certain disputes; making certain technical changes; defining certain terms and time limits; providing for the effective date of this Act; and generally relating to certain dispute resolution procedures.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

By renumbering

Section 4-5-401
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003
to be
Section 4-5-401
Part I. Scope
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003

By adding

Section 4-5-401.1
Part I. Scope
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003

By renumbering

Sections 4-5-402 through 4-5-407
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003
to be
Sections 4-5-402 through 4-5-407
Part II. Mediation, Fact-finding and Arbitration Panel
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003

By repealing and reenacting, with amendments

Sections 4-5-402, 4-5-403(e), and 4-5-404(a)
Part II. Mediation, Fact-finding and Arbitration Panel
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003

By adding

Sections 4-5-408 through 4-5-411
Part III. Binding Arbitration
Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
Professional Firefighters and Paramedics
Title 5. Same - Employee Relations Act
Article 4. Human Resources
Baltimore County Code, 2003

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2 COUNTY, MARYLAND, that Section 4-5-401 of Subtitle 4. Dispute Resolution Procedures -
3 Employees Other than Police Officers and Professional Firefighters and Paramedics, of Title 5. Same
4 - Employee Relations Act, of Article 4. Human Resources, of the Baltimore County Code, 2003, as
5 amended, is hereby renumbered to be Section 4-5-401 of Part I. Scope, of Subtitle 4. Dispute
6 Resolution Procedures - Employees Other than Police Officers and Professional Firefighters and
7 Paramedics, of Title 5. Same - Employee Relations Act, of Article 4. Human Resources, of the
8 Baltimore County Code, 2003.

9
10 SECTION 2. AND BE IT FURTHER ENACTED, that Sections 4-5-402 through 4-5-407
11 of Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and
12 Professional Firefighters and Paramedics, of Title 5. Same - Employee Relations Act, of Article 4.

1 Human Resources, of the Baltimore County Code, 2003, as amended, are hereby renumbered to be
2 Sections 4-5-402 through 4-5-407 of Part II. Mediation, Fact-finding and Arbitration Panel, of
3 Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers and Professional
4 Firefighters and Paramedics, of Title 5. Same - Employee Relations Act, of Article 4. Human
5 Resources, of the Baltimore County Code, 2003.

6
7 SECTION 3. AND BE IT FURTHER ENACTED, that Sections 4-5-402, 4-5-403(e), and
8 4-5-404(a) of Part II. Mediation, Fact-finding and Arbitration Panel, of Subtitle 4. Dispute
9 Resolution Procedures - Employees Other than Police Officers and Professional Firefighters and
10 Paramedics, of Title 5. Same - Employee Relations Act, of Article 4. Human Resources, of the
11 Baltimore County Code, 2003, as amended, are hereby repealed and reenacted to read as follows:

12
13 § 4-5-402.

14 In this PART II OF THIS subtitle, “Arbitration Panel” means the five-member advisory
15 arbitration panel appointed in accordance with § 4-5-403 of this PART II OF THIS subtitle.

16
17 § 4-5-403.

18 (e) The Panel shall be provided with staff support for the preparation of its
19 recommendations under this PART II OF THIS subtitle.

20
21 § 4-5-404.

22 (a) If the parties certify that they are actively engaged in good-faith bargaining and

1 making progress toward an agreement, by mutual agreement in writing, the parties may waive the
2 limitation periods established in this PART II OF THIS subtitle.

3
4 SECTION 4. AND BE IT FURTHER ENACTED, that Sections 4-5-408 through 4-5-411
5 are hereby added to Part III. Binding Arbitration, of Subtitle 4. Dispute Resolution Procedures -
6 Employees Other than Police Officers and Professional Firefighters and Paramedics, of Title 5. Same
7 - Employee Relations Act, of Article 4. Human Resources, of the Baltimore County Code, 2003, as
8 amended, to read as follows:

9
10 PART III. BINDING ARBITRATION.

11 § 4-5-408.

12 (A) IN THIS PART III OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
13 MEANINGS INDICATED.

14 (B) "PARTY" MEANS:

15 (1) THE COUNTY ADMINISTRATION; OR

16 (2) THE EXCLUSIVE REPRESENTATIVES FOR THE REPRESENTATION
17 UNITS SUBJECT TO THIS SUBTITLE ACTING COLLECTIVELY.

18 (C) (1) "WAGES" INCLUDES BASE SALARY, OVERTIME, SUBSTITUTION
19 PAY, SHIFT DIFFERENTIAL, AND CALL-BACK PAY.

20 (2) "WAGES" DOES NOT INCLUDE HEALTH BENEFITS.

1 § 4-5-409.

2 (A) ON DECEMBER 15, OR THE FIRST BUSINESS DAY AFTER DECEMBER 15,
3 OF THE FISCAL YEAR, THE PARTIES SHALL:

4 (1) IMMEDIATELY CONTACT THE AMERICAN ARBITRATION
5 ASSOCIATION; AND

6 (2) ASK FOR A LIST OF 25 LABOR ARBITRATORS FROM THE
7 BALTIMORE-WASHINGTON METROPOLITAN AREA TO BE PROVIDED ON AN
8 EXPEDITED BASIS.

9 (B) SEVEN ARBITRATORS SHALL BE CHOSEN FOR THE ARBITRATION PANEL
10 FROM AMONG THE 25 LABOR ARBITRATORS SUBMITTED AS PROVIDED IN
11 SUBSECTION (A) OF THIS SECTION.

12 (C) (1) WITHIN 3 BUSINESS DAYS AFTER RECEIPT OF THE LIST, THE
13 PARTIES SHALL ALTERNATELY STRIKE NAMES AND KEEP TRACK OF THE ORDER OF
14 THE STRIKE.

15 (2) THE PARTY STRIKING FIRST SHALL BE DETERMINED BY A COIN
16 TOSS.

17 (3) THE LAST REMAINING 7 ARBITRATORS ON THE LIST SHALL BE
18 DEEMED TO HAVE BEEN SELECTED BY THE PARTIES AND SHALL BE CONSIDERED
19 THE ARBITRATION PANEL FOR THAT FISCAL YEAR.

20

21 § 4-5-410.

22 (A) THE PARTIES MAY WAIVE THE TIME LIMITS AND DATES ESTABLISHED

1 IN THIS PART III OF THIS SUBTITLE BY MUTUAL WRITTEN AGREEMENT.

2 (B) EXCEPT AS PROVIDED IN § 4-5-411(E)(3) OF THIS PART III OF THIS
3 SUBTITLE, THE PARTIES INVOLVED IN THE DISPUTE SHALL SHARE EQUALLY THE
4 COSTS OF ARBITRATION.

5
6 § 4-5-411.

7 (A)(1) IF THE COUNTY ADMINISTRATION AND AN EXCLUSIVE
8 REPRESENTATIVE ARE UNABLE TO REACH AN AGREEMENT ON WAGES OR PENSION
9 BENEFITS BY FEBRUARY 1, AN IMPASSE MAY BE DECLARED IN THE NEGOTIATIONS
10 WITH THE EXCLUSIVE REPRESENTATIVE WITH WHICH THERE IS NO AGREEMENT,
11 BY THE EXCLUSIVE REPRESENTATIVE OR THE COUNTY ADMINISTRATION SENDING
12 WRITTEN NOTICE TO THE OTHER OF THE IMPASSE.

13 (2) ALL THE EXCLUSIVE REPRESENTATIVES THAT DECLARE AN
14 IMPASSE UNDER THIS SECTION SHALL COMBINE TO FORM ONE PARTY FOR
15 PURPOSES OF THIS SECTION.

16 (B) (1) WITHIN 5 CALENDAR DAYS AFTER RECEIPT OF THE WRITTEN
17 NOTICE AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE PARTIES SHALL
18 DESIGNATE A MEMBER OF THE ARBITRATION PANEL AS THE ARBITRATOR.

19 (2) THE PARTIES SHALL ALTERNATELY STRIKE NAMES AND KEEP
20 TRACK OF THE ORDER OF THE STRIKE.

21 (3) THE PARTY STRIKING FIRST SHALL BE DETERMINED BY A COIN
22 TOSS.

1 (4) THE LAST REMAINING ARBITRATOR SHALL BE DEEMED TO BE
2 SELECTED BY THE PARTIES.

3 (5) THE ARBITRATOR SHALL BE INFORMED OF THE ARBITRATOR'S
4 SELECTION AS SOON AS POSSIBLE BY THE PARTIES.

5 (6) IF THE ARBITRATOR IS UNWILLING OR UNABLE TO SERVE AS THE
6 ARBITRATOR, THE LAST PREVIOUS STRIKE FROM THE ARBITRATION PANEL SHALL
7 BE SELECTED AS THE ARBITRATOR.

8 (7) UNTIL AN ARBITRATOR HAS BEEN SELECTED AND THE
9 ARBITRATOR IS WILLING AND ABLE TO SERVE, THE PROCEDURE SET FORTH IN THIS
10 SUBSECTION SHALL BE FOLLOWED THROUGH ALL NAMES ON THE ARBITRATION
11 PANEL.

12 (C) WITHIN 6 CALENDAR DAYS AFTER THE SELECTION OF THE
13 ARBITRATOR, EACH PARTY SHALL SUBMIT TO THE ARBITRATOR AND THE OTHER
14 PARTY:

15 (1) A LIST OF WAGES OR A PORTION OF WAGES AND THE PENSION
16 BENEFITS WHERE THE PARTIES HAVE REACHED AN AGREEMENT; AND

17 (2) A LIST OF WAGES OR A PORTION OF WAGES AND THE PENSION
18 BENEFITS WHERE THE PARTIES HAVE NOT REACHED AN AGREEMENT AND THE
19 PARTY'S POSITION IN REGARD TO THE WAGES, PORTION OF THE WAGES, OR
20 PENSION BENEFITS.

21 (D) (1) WITHIN 7 CALENDAR DAYS AFTER RECEIPT OF THE SUBMISSIONS
22 PROVIDED FOR IN SUBSECTION (C) OF THIS SECTION, THE PARTIES SHALL SUBMIT

1 IN WRITING TO THE ARBITRATOR AND THE OTHER PARTY THEIR POSITION IN
2 REGARD TO THE WAGES, ANY PORTION OF THE WAGES AND PENSION BENEFITS AS
3 TO WHICH THE PARTIES HAVE NOT REACHED AGREEMENT.

4 (2) THIS POSITION SHALL BE REFERRED TO AS THE PARTY'S "FINAL
5 POSITION" AND NEED NOT BE THE SAME AS THE POSITION SET FORTH IN THE LIST
6 SUBMITTED UNDER SUBSECTION (C) OF THIS SECTION.

7 (E) (1) THE ARBITRATOR SHALL SCHEDULE A HEARING IN BALTIMORE
8 COUNTY TO BEGIN AS SOON AS POSSIBLE, BUT IN NO EVENT MORE THAN 10
9 CALENDAR DAYS AFTER THE DATE OF THE SUBMISSION OF THE PARTIES' FINAL
10 POSITION AS PROVIDED FOR IN SUBSECTION (D) OF THIS SECTION.

11 (2) THE ARBITRATION HEARING IS NOT OPEN TO THE PUBLIC AND
12 SHALL BE CONDUCTED CONSISTENT WITH THE RULES AND REGULATIONS OF THE
13 AMERICAN ARBITRATION ASSOCIATION.

14 (3) EACH PARTY SHALL BE RESPONSIBLE FOR THE COSTS OF THEIR
15 OWN ATTORNEY AND EXPERT WITNESSES.

16 (F) (1) THE ARBITRATOR SHALL:

17 (I) BE RESPONSIBLE FOR CONDUCTING THE PROCEEDINGS
18 PROVIDED FOR UNDER THIS SECTION;

19 (II) REVIEW THE FINAL POSITIONS OF THE PARTIES; AND

20 (III) NOT LATER THAN MARCH 16, ISSUE A WRITTEN DECISION
21 THAT INCLUDES THE ARBITRATOR'S DECISION AS TO ANY WAGES OR ANY PORTION
22 OF WAGES OR PENSION BENEFITS THAT ARE IN DISPUTE.

1 (2) THE ARBITRATOR MAY ADOPT A PACKAGE OF FINAL POSITIONS
2 OR RULE ON EACH FINAL POSITION SEPARATELY.

3 (3) IF NECESSARY, THE ARBITRATOR SHALL, IN THE WRITTEN
4 DECISION, DECIDE ANY DISPUTE CONCERNING THE NEGOTIABILITY OF WAGES, ANY
5 PORTION OF WAGES, OR PENSION BENEFITS.

6 (G) (1) IN MAKING THE DECISION UNDER SUBSECTION (F) OF THIS
7 SECTION, THE ARBITRATOR SHALL TAKE INTO CONSIDERATION, AMONG OTHER
8 PERTINENT FACTORS:

9 (I) THE WAGES AND PENSION BENEFITS OF THE EMPLOYEES
10 OF THE REPRESENTATION UNIT;

11 (II) THE WAGES AND PENSION BENEFITS OF OTHER
12 EMPLOYEES PERFORMING SIMILAR SERVICES IN COMPARABLE DEPARTMENTS IN
13 THE STATE OF MARYLAND ~~CONTIGUOUS~~ COMPARABLE TO BALTIMORE COUNTY,
14 TAKING INTO CONSIDERATION THE COST OF LIVING INDEX FOR THE AREA IN WHICH
15 ANY SUCH COMPARABLE DEPARTMENT IS LOCATED;

16 (III) THE WAGES AND PENSION BENEFITS OF OTHER
17 BALTIMORE COUNTY EMPLOYEES;

18 (IV) THE LAST PUBLISHED ANNUAL U.S. DEPARTMENT OF
19 LABOR CONSUMER PRICE INDEXES FOR ALL URBAN CONSUMERS, ALL ITEMS,
20 WASHINGTON-BALTIMORE INDEX;

21 (V) THE SPECIAL NATURE OF THE WORK PERFORMED BY THE
22 EMPLOYEES OF THE REPRESENTATION UNIT INCLUDING:

- 1 1. HAZARDS OF EMPLOYMENT;
- 2 2. PHYSICAL REQUIREMENTS OF EMPLOYMENT;
- 3 3. EDUCATIONAL QUALIFICATIONS;
- 4 4. JOB TRAINING AND JOB SKILLS;
- 5 5. SHIFT ASSIGNMENTS; AND
- 6 6. THE DEMANDS PLACED ON THE EMPLOYEES

7 COMPARED TO THE DEMANDS PLACED ON OTHER BALTIMORE COUNTY
8 EMPLOYEES;

9 (VI) STATE AND COUNTY MANDATED EXPENDITURES;

10 (VII) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
11 AVAILABILITY OF FUNDS, INCLUDING FINANCIAL RESOURCES AND SOURCES OF
12 REVENUE; AND

13 (VIII) THE INTEREST AND WELFARE OF THE PUBLIC.

14 (2) (I) IN CONSIDERING THE AVAILABILITY OF FUNDS, THE
15 ARBITRATOR SHALL ONLY CONSIDER THE GENERAL FUND REVENUES FOR THE
16 UPCOMING FISCAL YEAR UNDER § 706(A)(1) OF THE CHARTER.

17 (II) THE ARBITRATOR MAY NOT ALLOW OR CONSIDER ANY
18 TESTIMONY REGARDING FUNDS FOR CAPITAL IMPROVEMENTS OR SURPLUS
19 CONTINGENCY OR RESERVE FUNDS UNDER § 706(A)(3) AND (6) OF THE CHARTER.

20 (H) (1) ~~(H)~~ THE COUNTY EXECUTIVE SHALL SUBMIT TO THE COUNTY
21 COUNCIL IN A TIMELY MANNER THE PROVISIONS OF THE ARBITRATOR'S DECISION
22 THAT REQUIRE AN EXPENDITURE OF FUNDS OR THE ENACTMENT OF LEGISLATION.

1 ~~(H) THE COUNTY EXECUTIVE MAY SUBMIT ANY OTHER LEGISLATION~~
2 ~~THE COUNTY EXECUTIVE CONSIDERS EXPEDIENT.~~

3 (2) THE COUNTY EXECUTIVE SHALL UNDERTAKE ALL
4 ADMINISTRATIVE AND EXECUTIVE ACTION NECESSARY TO SUBMIT LEGISLATION
5 TO CARRY OUT THE DECISION ISSUED BY THE ARBITRATOR.

6 (3) THE SUBMISSION OF LEGISLATION TO THE COUNTY COUNCIL
7 FULFILLS THE OBLIGATIONS OF THE COUNTY EXECUTIVE UNDER THIS SECTION.

8 (I) THE COUNTY COUNCIL IS NOT BOUND BY ANY DECISION MADE UNDER
9 THIS SECTION AND MAY ACT UPON THE SUBMITTED LEGISLATION IN ACCORDANCE
10 WITH THE PROVISIONS OF THE CHARTER.

11 (J) A RESOLUTION OF A DISPUTE REACHED IN ACCORDANCE WITH THIS
12 SECTION SHALL BE FOR NO MORE THAN ONE FISCAL YEAR.

13 (K) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE
14 ARBITRATOR FROM ACTING AS A MEDIATOR AND ATTEMPTING TO MEDIATE A
15 DISPUTE AT ANY TIME BEFORE THE FINAL RESOLUTION OF THE ARBITRATION AS
16 PROVIDED FOR IN THIS SECTION.

17 (L) (1) THE PARTIES ARE STRONGLY ENCOURAGED TO REACH AN
18 AGREEMENT ON ALL ISSUES WHENEVER POSSIBLE.

19 (2) THIS SECTION MAY NOT BE CONSTRUED TO INTERFERE WITH
20 ANY EFFORTS THE PARTIES MAY UNDERTAKE TO REACH AN AGREEMENT
21 CONCERNING ANY DISPUTES AT ANY TIME.

1 (M) IF A MEMORANDUM OF UNDERSTANDING COVERING THE
2 REPRESENTATION UNITS REFERENCED IN THIS SUBTITLE EXPIRES AFTER THE
3 EXCLUSIVE REPRESENTATIVE HAS GIVEN NOTICE OF ITS DESIRE TO ENTER INTO
4 COLLECTIVE BARGAINING FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING
5 BUT BEFORE THE SUCCESSOR MEMORANDUM OF UNDERSTANDING BECOMES
6 EFFECTIVE, THE COUNTY MAY NOT, WITHOUT THE WRITTEN APPROVAL OF THE
7 EXCLUSIVE REPRESENTATIVE, MAKE ANY CHANGES IN THE WAGE SCALES OF THE
8 EMPLOYEES IN THE BARGAINING UNIT BETWEEN THE EXPIRATION OF THE CURRENT
9 MEMORANDUM OF UNDERSTANDING AND THE EFFECTIVE DATE OF THE
10 SUCCESSOR MEMORANDUM OF UNDERSTANDING.

11
12 SECTION 5. AND BE IT FURTHER ENACTED, that Section 4-5-401.1 is hereby added
13 to Part I. Scope, Subtitle 4. Dispute Resolution Procedures - Employees Other than Police Officers
14 and Professional Firefighters and Paramedics, Title 5. Same - Employee Relations Act, Article 4.
15 Human Resources of the Baltimore County Code, 2003, as amended, to read as follows:

16
17 § 4-5-401.1.

18 (A) IN THIS SECTION “PARTY” AND “WAGES” HAVE THE MEANINGS STATED
19 IN § 4-5-408 OF THIS SUBTITLE.

20 (B) A PARTY MAY NOT SUBMIT A DISPUTE INVOLVING PENSION BENEFITS OR
21 WAGES FOR RESOLUTION UNDER PART II OF THIS SUBTITLE WITHOUT THE
22 IRREVOCABLE WRITTEN CONSENT OF THE OTHER PARTY.

1 (C) A DISPUTE INVOLVING PENSION BENEFITS OR WAGES MAY ONLY BE
2 SUBMITTED FOR RESOLUTION UNDER A SINGLE PART OF THIS SUBTITLE.

3

4 SECTION 5 6. AND BE IT FURTHER ENACTED, that this Act, having passed by the
5 affirmative vote of five members of the County Council, shall take effect April 1, 2014.